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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 31st October 2023

No. 13/2/40-HII(2)-2023/16005.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **116/2018 dated 04.08.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MADHUBAN S/O SH. MANN SINGH YADAV, R/O HOUSE NO. 28, BEHLANA, AIRPORT, CHANDIGARH (Workman)

AND

1. GROZ-BECKERT ASIA PVT. LTD., 133-135, PHASE-I. INDUSTRIAL AREA, CHANDIGARH, THROUGH ITS FACTORY MANAGER

2. HAWKS EYE SECURITY SERVICES PVT. LTD., SCO NO.181-182, 1ST FLOOR, SECTOR 8-C, CHANDIGARH, THROUGH ITS AUTHORISED SIGNATORY (Management)

AWARD

1. Madhuban, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 *(here-in-after in short called 'ID Act').*

2. Briefly stated the averments of claim statement are that workman was appointed as a Helper on 10.07.2007 by management No.1 (GBA) and was assigned the work of hand straightening of knitting needles to prove straightness quality in Hand Straightening Department. The interview was conducted by its then Factory Manager namely Shri Manmohan Singh Dhaliwal. The workman was given token No.35 at the time of his removal. The workman is a 'workman' defined under Section 2(s) of the ID Act. It was informed to the workman that he would be deputed on regular work of the factory and his employment would be regular, though on papers it would be through contractor namely Hawks Eyes Security Services Pvt. Ltd. / management No.2. It was further informed that the workman would be entitled for all the benefits. Accordingly, the workman was trained by the management No.1 and then deputed in the Hand Straightening Department. The process of Hand Straightening is to remove bends from the needles and to make needles straight with hands. The operation was done after process of automatic repair shortly named as R-Comb (Repair Combination).

After Hand Straightening the product moves to final inspection and then packaging. Hence, the workman was engaged in a very crucial and important manufacturing / quality process of management No.1. The operation on which the workman was engaged was a regular work and hence about 30 workmen had been engaged by the management No.1 for this process. The daily timing of the workman was from 8:30 to 5:00 P.M. with weekly off. The work of workman was controlled, supervised and assessed by management No.1's engineer namely Shri Satish Sharma. During some period the work of the workman was controlled, supervised and assessed by its other engineers namely Shri Lalit Mohan Kalia. The personal file, record of leaves etc. of the workman was maintained by its Human Resource Department. The workman was being paid ₹ 14,000/- as gross salary including incentives and allowances and after deduction of provident fund, ESI and diet deduction, the workman was receiving an amount of ₹12,303/- per month at the time of his removal as salary by the management No.1 though through contractor. Management No.1 have paid ₹1,200/-on 18.10.2017 as Diwali festival sweets and have also paid ₹ 3,000/- in 2010 while celebrating its Golden Jubilee Celebration. This was paid to all the employees of management No.1. The workman was also enjoying yearly increment given by management No.1. The last drawn net salary of the workman is ₹ 12,303/-. The workman had not been given his salary of April 2018 on time and the same was paid on 06.07.2018 after filing of demand notice. The work & conduct of the workman while in service was unblemished and satisfactory. Neither any charge sheet was served to him nor any inquiry was conducted against him for any misconduct during whole tenure of his work while he was in service. On 30.04.2018 the workman was called by Human Resource Officer of management No.1 namely Shri Ajay Patyal and he directed the workman not to come on duty from the next day and forced him to sign some blank papers but the workman refused for the same. Hence, the managements illegally, arbitrarily and malafidely terminated the services of the workman all of a sudden without following the mandatory procedure laid down under the provisions of the ID Act. The junior employees than workman have been retained in the service, in violation of provisions of law by the managements. The said Hand Straightening process is still going on as the process is very crucial and is a regular work of the factory of management No.1. While terminating the services of the workman, the managements have utterly violated the provisions of the ID Act. Neither prior notice was issued to the workman nor he was paid wages in lieu of the notice period. The nature of work being done by the workman is regular process of manufacturing and quality improvement. The workman through the process of Hand Straightening improves the quality of the needles. Without the process of Hand Straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, being regular process, the Hand Straightening process cannot be outsourced through any contract. Any contract entered into between the managements to such effect is illegal / sham and to avoid legal liabilities in the hands of the management No.1 as envisaged under labour laws. The workman has served in the factory of management No.1 for continuous period from 10.07.2007 to 30.04.2018. The workman has completed 240 days in 12 calendar months preceding his termination. Previously, the workman has submitted demand notice dated 08.06.2018 to the managements and before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh, both the managements submitted its reply dated 24.07.2018 and 05.10.2018 respectively. The Conciliation Officer initiated conciliation proceedings but the same failed. Accordingly, Conciliation Officer vide letter Memo No.6831 dated 12.10.2018 advised the workman to refer Section 2-A of the ID Act and accordingly the claim. During the pendency of the conciliation proceedings before the Conciliation Officer, management No.2 to create elusion and false bona fide sent an ante dated letter dated 24.05.2018, actually sent on 13.06.2018, falsely stating that Hand Straightening Unit is closed at the management No.1 factory. When the workman contacted the management No.2, he was asked to work at some other place at a salary of ₹ 9,000/- which was much lower than the last paid salary of ₹14,000/-. The workman had made it clear to management No.2 that he is entitled to same wages as he was last paid and did not work for the lesser amount. However, no such offer was paid by the management No.2 during the conciliation proceedings. Prayer is made that the application may be allowed. The managements may be ordered to reinstate the service of the workman with continuity of service along with all consequential benefits.

3. On notice, management No.1 contested the claim statement by filing written statement on 12.07.2019 wherein preliminary objections are taken on the ground that the claimant/person concerned was never in the employment of management No.1 (GBA). There was no privity of contract between the concerned person and management No.1. As such, no employer-employee ever existed between management No.1 and the

workman. Therefore, the question of appointment or termination of services of the concerned person by the management No.1 does not arise. The concerned person was employee of management No.2 (contractor), who is a licensed contractor under the Contract Labour (Regulation & Abolition) Act, 1970 *(here-in-after referred the 'CLRA')*. The concerned person was getting his monthly wages from management No.2 / contractor. Management No.2 / contractor is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act, 1948 having EPF Code PBCHD0012070000 and ESI code 17120364120011001 and the concerned person was covered under the PF and ESI under the above said codes of management No.2 / contractor. Management No.1 / GBA had no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per the instructions of supervisor / Assistant Supervisor of management No.2 / contractor. His work & conduct was also supervised and controlled by management No.2 / contractor, through its Supervisory / Assistant Supervisor. Therefore, the present statement of claim / reference is bad in the eyes of law, as such the same needs to be dismissed on this ground itself. The concerned person was employed by the management No.2 (contractor). The services of the person concerned were regulated by the contractor in accordance with the CLRA Act, 1970 and Rules thereunder and not under the ID Act. Therefore, the concerned person had the remedy to file claim under the CLRA Act, 1970 and Rules but not under the ID Act. Hence, the present statement of claim / reference needs to be rejected on this ground also. The services of the concerned person were not required by the contractor and the concerned person was offered alternative employment by management No.2 / contractor, which offer was not availed by the person concerned. Therefore, the present statement of claim / reference is not maintainable and is liable to be dismissed on this ground too. Since, there was no employment of the person concerned with the management No.1 / GBA, the question of termination of appointment of the concerned person by the management No.1, GBA does not arise. Hence, the present statement of claim / reference seeking relief from management No.1 / GBA is bad in the eyes of law and is liable to be dismissed on this score as well.

4. Further on merits, it is stated that the concerned person was employee of management No.2 / contractor and he was deployed to work as Helper in the factory of management No.1 / GBA as a contract labour. Hence, the date of joining of the concerned person cannot be confirmed by management No.1 / GBA. The concerned person was duty by management No. 2 / contractor to work as a Helper in the Hand Straightening Department. Being a contract labour of management No.2 / contractor, he was not required any training as he was simply to work as a Helper. Since, the work in the Hand Straightening Department was subject to fluctuation, this activity was assigned to the contractor who used to supply contract labour as per requirement from time to time. The work of the concerned person was controlled, supervised and assessed by supervisory / Assistant Supervisory of management No.2 / contractor. The concerned person was employee of management No.2 / contractor and therefore it is management No.2 who would confirm the rate of wages paid to the contractor. It is denied as wrong that management No.1 / GBA has ever paid ₹ 1,200/- as Diwali festival sweets or ₹ 3,000/- in 2010 on occasion of silver jubilee celebration. In fact management No.1, GBA has never paid any amount whatsoever directly to the concerned person. The concerned person was getting his monthly wages and other payment only from the management No.2 / contractor. It is denied for want of knowledge that the last drawn net salary of the workman was ₹ 12,303/- and that workman had never been given his salary of April 2018 on time and the same was paid on 06.07.2018, after filing of demand notice. It is denied that on 30.04.2018 the concerned person was called by Human Resource Officer Shri Ajay Patyal and that he directed the concerned person not to come on duty from the next date and he forced the concerned person to sign some blank papers, to which concerned person refused. In fact, the concerned was never called by Shri Ajay Patyal and he was never directed not to come on duty on the next date. He was never forced to sign on blank papers. The concerned person was employee of management No.2 / contractor and hence the management No.1 / GBA had no role to play in the appointment or termination of the services of the concerned person. Section 20-G of the ID Act is not attracted in the present case. Management No.1 / GBA was having surplus manpower and in that situation management No.1 / GBA had two options i.e. to dispense with the services of surplus permanent manpower or to adjust them in the Hand Straightening Department, which was outsourced to contract labour. Keeping in view the interest of the permanent workers, it was decided to do away with the contract labour so engaged in the Hand Straightening Department. Management No.2 / contractor

was asked to withdraw his contract labour. The claimant was one of such contract labour. Therefore, the regular work force of management No.1 / GBA was shifted to Hand Straightening Department. It is denied as wrong that the process of Hand Straightening improve the quality of needles. It is denied as wrong that without this process, the product of management No.1 can either be packed nor sold into the market. The Hand Straightening of needles is not perennial in nature. Management No.1 registered itself under CLRA Act, 1970. Management No.2 / contractor obtained licence under the CLRA Act, 1970 from the competent authority to supply the contract labour to management No.1 / GBA. Therefore, there was no illegality or any violation of CLRA Act, 1970 in outsourcing the Hand Straightening work to management No. 2. It is denied that the concerned person have served for continuous period was an employee of management No.1 / GBA from 10.07.2007 to 30.04.2018. The concerned person was employee of management No.2 / contractor. It is admitted to the extent that the concerned person submitted demand notice dated 03.06.2018 for which the conciliation proceedings took place. Management No.1 / GBA and management No.2 / contractor submitted reply to the demand notice on 24.07.2018 and 05.10.2018 respectively. The alternative employment was issued to the claimant by management No.2 (contractor) but the same was declined by the claimant. Consequently, conciliation proceedings failed. During conciliation management No.2, contractor offered alternate employment to the claimant with its other clients but this offer was denied by the claimant on the ground that he will not work at any other place except management No.1 / GBA. Rest of the averments of claim statement are denied as wrong and prayed is made that the claim statement / reference may be dismissed with exemplary cost.

5. Management No.2 / contractor contested the claim statement by filing written statement on 07.10.2019 wherein preliminary objections are raised on the ground that management No.2 is an agency that engages workers on contract according to the requirement of principal employer. The contract of management No.2 with management No.1 is service contract of temporary nature, based on the volume of work generated by the company. Accordingly, the manpower was recruited on temporary / piece rate basis. Over a period of time the work generated became lesser and lesser, therefore management No.2 had to slowly reduce the manpower according to the work requirement of principal employer. The nature of work being temporary the workers were employed on day to day basis although their calculations of payment were done monthly. Since the work requirement reduced with the passage of time and the answering management being concerned about the future of the concerned person arranged alternate employment for them, where it sought to adjust to them. The workman did not respond this gesture and continued on the present job knowingly fully well that the Hand Straightening work is coming to an end in the plant of principal employer. When the answering management started the service contract with management No.1, there were over 100 workers deployed in the work of straightening the needles as the orders dwindled and the work reduced the workers engaged by the answering management also reduced to about 20. Management No.1 ultimately closed the Hand Straightening work of the needles and the worker including the present one become surplus to the requirement and he was offered alternative employment at other places where the answering management has work requirement but the workman choose not to go there and thus, abandoned the employed. The answering management is still ready to offer them employment at other places on similar wages if possible. Management No. 2 has not been impleaded in a legal and proper manner. Therefore, the statement of claim is bad in law. The present statement of claim is liable to be rejected as the concerned workman is not competent to file the statement of claim under the ID Act. Thus, the statement of claim may be rejected on this ground.

6. On merits, it is stated that the workman was a piece rate worker, paid by number of needles he retrieved. He worked in the factory of management No.1. The timings of the workman were from 8:30 A.M to 5:00 P.M. with weekly off. The answering management had offered job to the workman at another place where the work was available but the workman was adamant to work at the premises of the management No.1 only and did not accept the offer of the answering management. It is denied that the

workman was offered salary @ ₹ 9,000/- only. The workman gainfully employed at another place. Further similar stand is taken as taken in the preliminary objection. Rest of the contents of the claim statement are denied as wrong and prayer is made that the workman is not entitled to any relief from management No.2. The claim application / reference is liable to be dismissed with cost.

7. The workman filed rejoinder to the written statement of management No.1 wherein the contents of the written statement except admitted facts are denied as wrong and averments of claim statement are reiterated. Rejoinder to written statement of management No. 2 not filed.

8. From the pleadings of the parties following issues were framed vide order dated 26.02.2020 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW

2. Whether there exists no employer-employee relationship between management No.1 and workman ? OPM-1

3. Relief.

9. In evidence workman Madhuban examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with letter dated 25.05.2018 issued by management No.2 to the workman relating to the subject of reminder for relocation of services Exhibit 'AW1/1' and envelope bearing registered postal receipt dated 13.06.2018 Exhibit 'AW1/2'. During the cross-examination of AW1 management No.1 put documents Exhibit 'M1' and Exhibit 'M2' to the witness.

Exhibit 'M1' is copy of written comments dated 05.10.2018 submitted by M/s Hawks Eye Security Services Private Limited (management No.2 herein) before the Conciliation Officer and Assistant Labour Commissioner, U.T. Chandigarh.

Exhibit 'M2' is copy of written comments dated 24.07.2018 submitted by M/s Groz-Beckert Asia Private Limited (management No.1 herein) before the Conciliation Officer and Assistant Labour Commissioner, U.T. Chandigarh.

On 16.03.2023 Learned Representative for the workman closed evidence in affirmative on behalf of the workman.

10. On the other hand, management No.1 examined MW1 Ajay Kumar Patyal - Senior Executive - HR M/s Groz Beckert Asia Pvt. Ltd. (GBA), Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with copy of extension of contract and withdrawal of contract labour dated 30.04.2018 vide Exhibit 'M3. The original of Exhibit 'M3' was brought at the time of recording testimony, which was seen and returned. During cross-examination MW1 placed on record authority letter dated 14.03.2023 Exhibit 'M4' whereby he has been authorised by the management to appear, make statement, lead evidence and tender document. (Exhibit 'M4' is numbered twice due to inadvertence, in order to avoid any ambiguity authority letter dated 14.03.2023 is renumbered as Exhibit 'M4/1')

11. Management No.1 also examined MW2 Sukhjit Singh - Clerk, O/o Assistant Labour Commissioner, Sector 30-B, Chandigarh, who brought into evidence documents Exhibit 'MW2/1' to Exhibit 'MW2/4'.

12. Management No.1 also examined MW3 Lalit Mohan Kalia - Assistant Manager (Quality Control), M/s GBA, who tendered his affidavit Exhibit 'MW3/A' along with copy of authority letter dated 26.05.2023 in his favour vide Exhibit 'M4' and authority letter dated 14.03.2023 in favour of Factory Manager issued by the Managing Director of GBA vide Exhibit 'M5'.

13. Management No.2 did not lead any oral or documentary evidence. Learned Representative for management No.2 closed evidence on 20.07.2023. Learned Representative for management No.1 closed the evidence on 04.08.2023.

14. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are under :-

Issue No. 1 & 2 :

15. Onus to prove issue No. 1 is on the workman. Onus to prove issue No.2 is on management No.1. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

16. To prove its case, the workman Madhuban examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the contents of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 has supported his oral version with documents Exhibit 'AW1/1' and Exhibit 'AW1/2'.

17. On the other hand, management No.1 examined MW1 Ajay Kumar Patyal - Senior Executive HR of GBA, who vide his affidavit Exhibit 'MW1/A' deposed that he is conversant with the facts of the present case. The workman concerned was employee of M/s Hawks Eye Security Pvt. Ltd. and was deployed / outsourced to work as a Helper in the factory of GBA, Chandigarh. There was no privity of contract between the workman concerned and GBA. No employer-employee relationship existed between the workman concerned and GBA. The workman concerned was paid his monthly wages by M/s Hawks Eye Security Pvt. Ltd. The workman concerned was covered under respective EPF and ESI codes of M/s Hawks Eye Security Pvt. Ltd. The work & conduct of the workman concerned was looked after by M/s Hawks Eye Security Pvt. Ltd. through its Supervisor Smt. Krishna Rani. M/s Hawks Eye Security Pvt. Ltd. was engaged by GBA to undertake casual nature of work in the Hand Straightening Section of GBA i.e. to retrieve the good quality of needles out of the scrapped needles and to straighten them and for this process M/s Hawks Eye Security Pvt. Ltd. was to deploy / outsource its manpower including the workman in the factory of GBA. The arrangement was discontinued vide Exhibit 'M3' as the volume of Hand Straightening of needles was considerable reduced and it was decided to get this work done by the permanent employees of the management No.1. M/s Hawks Eye Security Pvt. Ltd. was advised to withdraw its contract labour deployed for hand straightening on or before 30.06.2018. The agreement for contract of work with M/s Hawks Eye Security Pvt. Ltd. is legal and not sham at all. The GBA is registered under the CLRA Act, 1970 vide certificate of registration No.PB/PE/CL/UT/CHD/2003/49 dated 08.01.2003 for engaging contract labour for casual work. M/s Hawks Eye Security Pvt. Ltd. is a licensed contractor having licence No.CL/UT/CHD/239 under the CLRA Act, 1970. The services of the workman concerned were never terminated by GBA. The concerned workman was never interviewed by GBA nor was his work ever controlled, supervised and assessed by Sh. Satish Sharma or by Sh. Lalit Mohan Kalia, Engineer of GBA. His attendance / leave record was maintained by M/s Hawks Eye Security Pvt. Ltd. The workman concerned was not paid ₹1,200/- as Diwali festival sweets and ₹ 3,000/- in 2010 on the occasion of golden jubilee of GBA. He was never paid any amount whatsoever by GBA. The workman concerned was never called by him directing him not to come on duty from next day. He was never forced to sign on some blank paper. The concerned workman was never informed that he would be deputed on regular work and that his employment is regular. The concerned workman was deployed as Helper and no training was required to be given by the GBA. MW1 has supported his oral version with copy of extension of contract and withdrawal of contract labour dated 30.04.2018 vide Exhibit 'M3'.

18. In order to prove the contract between management No.1 and 2, management No.1 examined MW2 Sukhjeet Singh, O/o Assistant Labour Commissioner, Sector 30, Chandigarh, who deposed that he has brought the summoned record. M/s Groz-Beckert Asia Pvt. Ltd. (G.B.A.) was issued certificate of registration under the Contract Labour (Regulation & Abolition) Act, 1970 first time on 08.01.2003. The certificate contains the names of the contractors including the name of M/s Hawks Eye Security Services Pvt. Ltd. (HESS). The

certificate also contains the nature of work to be performed by the contract labour in the establishment of GBA i.e. canteen contractor, house-keeping, security, loading and unloading, casual work, civil work etc. The GBA used to get the certificate of registration renewed / amended from our department from time to time up to the year 31.12.2021. The copy of the certificate of registration issued to GBA accompanied with Memo No.7579 dated 03.11.2003 is Exhibit 'MW2/1' and certificate of registration of GBA issued on 25.12.2020 valid up to 31.12.2021 is Exhibit 'MW2/2'. He further deposed that M/s Hawks Eye Security Services Pvt. Ltd. (HESS) was granted a license No. C.L./U.T./C.H.D/239 dated 26.02.2003 to deploy contract labour in the factory of GBA. The license issued to HESS has the endorsement on the top of the license showing GBA as Principal Employer (PE). The license contains the nature of work to be performed by the contract labour deployed by the contractor in the establishment of the principal employer (GBA), i.e. House-Keeping, Security, loading, unloading, casual work, civil work etc. The license of HESS was renewed up to 31.12.2017. Copy of the licenses along with endorsements containing 8 pages is Exhibit 'MW2/3'. MW2 further deposed that he has brought the original file of conciliation proceedings pertaining to the present case. The conciliation proceedings dated 05.10.2018 bears the signatures of the workman and the same were also signed by the Conciliation Officer (CO), copy of the same is Exhibit 'MW2/4'.

19. Management No.1 also examined MW3 Lalit Mohan Kalia - Assistant Manager (Quality Control) of M/s GBA, who vide his affidavit Exhibit 'MW3/A' deposed that he joined the services of GBA on 06.05.1997 and now has been working in its quality control department as Assistant Manager (Quality Control). Shri Satish Sharma was also working in his department as Assistant Engineer (Quality Control). Shri Satish Sharma retired on 04.04.2019. Neither he nor Shri Satish Sharma ever supervised or controlled the work & conduct of the workers deployed by the contractor in the Hand Straightening Department. The work & conduct of the contractual workers deployed by the contractor in the Hand Straightening Department was supervised and controlled by Smt. Krishna Rani, who deployed by the contractor. He has been authorized by the Factory Manager of GBA to make statement before this Court in the present case. The authority letter is Exhibit 'M4'. The Factory Manager has been authorised by the Managing Director to authorize any official of the company to make statement before any Labour Court vide Exhibit 'M5'.

20. Learned Representative for the workman contended that the workman was appointed as a Helper by management No.1 (GBA) and was assigned the work of hand straightening of knitting needles to improve straightness quality in the Hand Straightening Department. The interview was conducted by Shri Manmohan Singh Dhaliwal, the then Factory Manager whereas on papers the appointment of workman was through the contractor Hawks Eyes Security Services Pvt. Ltd. / management No.2. Any contract entered into between management No.1 and 2 to such effect is illegal / sham and to avoid legal liabilities in the hands of management No.1 as envisaged under the labour laws. Moreover, the workman through the process of hand straightening improves the quality of needles. Without the process of hand straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, the hand straightening process being regular process cannot be outsourced through contractor. About 30 workmen were engaged by management No.1 for this process. Apart from that work of the workman was supervised and assessed by Shri Satish Sharma and Shri Lalit Mohan Kalia Engineers of management No.1. The personal file, record of leave etc. of the workman was also maintained by its Human Resource Department. Management No.1 also paid ₹ 1,200/-on 18.10.2017 as Diwali festival sweets and ₹ 3,000/- in 2010 while celebrating its golden jubilee to all the employees of management No.1 including the workman. Besides, the workman was also given yearly increment by the management No.1. In this manner, there is a direct relationship of employer and employee between management No.1 and the workman.

21. On the other hand, learned Representative for management No.1 contented that there is no relationship of employer-employee between the management No.1 and the workman. The workman was appointed by management No.2 (contractor) and deployed to work in the establishment of management No.1.

The workman was getting his monthly wages from management No.2. Management No.2 / contractor is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act, 1948 having EPF Code PBCHD0012070000 and ESI code 17120364120011001 and the concerned person was covered under the PF and ESI under the above said codes of management No.2 / contractor. Management No.1 / GBA had no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per the instructions of supervisor / Assistant Supervisor of management No.2 / contractor. His work & conduct was also supervised and controlled by management No.2 / contractor, through its Supervisor / Assistant Supervisor.

22. In order to determine the relationship of employer & employee between management No.1 & workman, it is important to refer cross-examination of workman i.e. AW1 Madhuban. When put to cross-examination by management No.1, AW1 admitted as correct that he has impleaded management No.1 as principal employer and management No.2 as contractor. AW1 admitted as correct that he was covered under EPF and ESI under the respective code of management No.2. AW1 admitted as correct that he was getting his monthly wages directly from management No.2. AW1 admitted as correct that management No.2 has withdrawn them from management No.1 on account of termination of the contract between management No.1 and management No.2 and their work was given to the permanent employee of management No.1. AW1 in his cross-examination further stated that if any offer of alternative employment is given to him today by management No.2, then he is not ready to accept the same. AW1 admitted as correct that he was employee of management No.2 (Hawks Eye Security). AW1 voluntarily stated that he was interviewed by Manmohan Singh Dhaliwal, HR Manager of management No.1 who told him that he has been given job as permanent employee of GBA. AW1 further stated that he do not have any proof in support of his voluntarily statement. AW1 further stated that during tenure of his service under the contractor / management No.2 he never made any protest that he was interviewed by management No.1 and he has not been given permanent job. AW1 admitted as correct that the activity of Hand Straightening Department was subject to fluctuation. AW1 admitted as correct that due to fluctuation and un-certainty of work in the Hands Straightening Section, the employees were deployed on contract basis through the contractor. The aforesaid version of would prove that as per his own admission he was getting his wages directly from the contractor and was working as Helper in the factory of management No.1 being contractual employee of management No.2. The workman has failed to place on record any document showing that he was appointed by management No.1. The workman has admitted that he was withdrawn from the factory of management No.1 by the contractor on account of termination of contract between the management No.1 and the contractor. The workman / AW1 has categorically admitted that he was employee of the contractor. Furthermore, MW1 Ajay Kumar Patyal when to cross-examination by the workman stated that Smt. Krishna Rani, a retired employee of GBA was employed by the contractor M/s Hawks Eye Security Services Pvt. Ltd. and she was deputed as a Supervisor to supervise the operation of hand straightening. The denial on part of the workman / AW1 during his cross-examination that no Smt. Krishna Rani was working with the Hand Straightening Section of management No.1 and that his work was not supervised by her would prove that the version of the workman is not trust worthy and he has deliberately denied the factual position. The plea taken by the workman that his work was supervised and controlled by Shri Satish Sharma and Shri Lalit Mohan Kalia, Engineers of management No.1 has been disproved from the version of MW3 Lalit Mohan Kalia, who stated that neither he nor Shri Satish Sharma ever supervised or controlled the work & conduct of the workman. MW3 has stated that the work & conduct of the contractual workers deployed by the contractor in the Hand Straightening Department was supervised and controlled by Smt. Krishna Rani, who was deployed by the contractor. From the aforesaid version of MW3 it is duly proved on record that Smt. Krishna Rani deployed by the contractor was supervising the work & conduct of the workman and Shri Satish Sharma and Shri Lalit Mohan Kalia, Engineers of management No.1 never supervised the work & conduct of the workman. Moreover, the workman has failed to controvert the fact that

his services were covered under the ESI and EF scheme by the contractor / management No.2. The expression 'control and supervision' in the context of contract labour was explained by the Hon'ble Supreme Court of India in case law titled as ***International Airport Authority of India Versus International Aircargo Workers' Union & Another,*** reported in ***2009(13) SCC 374*** wherein in para 38-39 it is observed as below :-

> *"38. .....if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.*
>
> *39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."*

The above mentioned case law is applicable to the facts of the present case to an extent. The workman has failed to produce any document on record to establish that he was direct employee of the principal employer. No document such as appointment letter, written contract, joining report, attendance register, leave record, PF record, ESI record is not produced by the workman showing existence of employer-employee relationship between the management of GBA and the workman. As discussed above, the workman / AW1 in his cross-examination has admitted that he was getting his wages directly from the contractor. AW1 in his cross-examination has also admitted that he was employee of the contractor. Accordingly, it is proved that the workman was working under the supervision and control of GBA i.e. principal employer but his control was secondary and the primary control was with M/s Hawks Eye Security Pvt. Ltd. i.e. contractor.

23. Learned Representative for the workman argued that GBA was not registered as principal employer under the CLRA Act, 1970 in the year 2003 or 2004 and M/s Hawks Eye was also not having licence or registration under the CLRA Act, 1970. Learned Representative for the workman had put suggestions to this effect to MW1 Ajay Kumar Patyal in his cross-examination, who denied the same as wrong. On the other hand, management No. 1 has proved certificate of registration No. PE/CL/UT/CHD/2003/49 dated 08.01.2003 issued to GBA accompanied with Memo No.7579/03.11.2003 vide which the necessary amendment has been made in the registration certificate bearing No. PE/CL/UT/CHD/49 as Exhibit 'MW2/1' and certificate of registration of GBA issued on 25.12.2020 valid up to 31.12.2021 vide Exhibit 'MW2/2'. Management No.1 has also proved the licence No. CL/UT/CHD/239 dated 26.02.2003 granted to M/s Hawks Eye Security Pvt. Ltd. to deploy contract labour in the Factory of GBA vide Exhibit 'MW2/3'. The licence bears endorsements showing that the licence was renewed up to 31.12.2017. Thus, management No.1 has proved that there was a valid contract between management No.1 & 2 and the management No.2 was duly licensed to enter into agreement with the management No.1 to deploy the contract labour in the establishment No.1. Moreover, as per the judgment of Hon'ble Supreme Court of India referred by Learned Representative for the management reported ***1992(1) SCT 107 SC*** titled as ***Dina Nath & Others Versus National Fertilizers Limited & Others,*** if the principal employer is getting registered under Section 7 of the CLRA Act, 1970 and the labour contractor is not getting licence under Section 12 of CLRA Act, 1970, the principal employer and the

contractor are liable for prosecution for violation of Sections 7 & 12 of the CLRA Act, 1970. The persons employed by the principal employer through contractor would not become the employee of principal employer on account of violation of Section 7 & 12 of the CLRA Act, 1970. Another judgment referred by Learned Representative for the management reported in ***2006(1) SCT 701 (P&H)*** titled as ***M/s T.T. Public School Versus The Presiding Officer & Another,*** is also applicable to the facts of the present to an extent wherein it has been held that unregistered contractor does not cease to be a contractor nor the labour supplied by him will become the employee of the principal employer.

24. Learned Representative for the workman laid much stress upon the fact that agreement of contract if any exists between management No.1 & 2 is merely a sham and paper transaction just to avoid the liability of employer towards the workman. In this regard MW1 Ajay Kumar Patyal when put to cross-examination by the workman denied the suggestion as wrong that arrangement of any contract, if exists is merely a sham and paper transaction just to avoid the liability of employer towards its workman. On the other hand, Learned Representative for the management has argued that in the present case the workman served a demand notice under Section 2-A of the ID Act challenging thereby his termination. Upon receipt of demand notice, the conciliation proceedings were initiated by the Conciliation Officer, U.T. Chandigarh. Management No.1 and management No.2 appeared during conciliation proceedings and filed their respective written comments. When no settlement took place between the parties, Learned Conciliation Officer on the basis of demand notice of the workman, was persuaded to refer the same for adjudication by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh as per sub-Section 2-A(2) of the ID Act. Thus, adjudication in the present case is to be confined to the subject matter of demand notice of the workman. None of the parties can be permitted to make out a new case than the one which was raised by it for which the appropriate Government / Conciliation Officer was persuaded to refer the same for adjudication. To support his argument Learned Representative for management No.1 referred the judgment reported in ***AIR 1959 SC 1191*** titled as ***Calcutta Electric Supply Corporation Limited Versus Calcutta Electric Supply Workers Union & Others*** and another judgment reported in ***1978 LIC 1416 Calcutta*** titled as ***Bengal River Transport Association Versus Calcutta Post Shramik Union & Others.*** To my opinion, the aforementioned argument advanced by Learned Representative for management No.1 carries force because perusal of demand notice dated 03.06.2018 raised by the workman under Section 2-A of the ID Act would show that the averments pleaded in para 11 of the claim statement are not part of the demand notice. In para 11 of claim statement, the workman has pleaded that the nature of work being done by the applicant is regular process of manufacturing and quality improvement. The workman through the process of Hand Straightening improves the quality of the needles. Without the process of hand straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, being regular process, the hand straightening process cannot be outsourced through any contract. Any contract entered into between the managements to such effect is illegal / sham and to avoid legal liabilities in the hands of the management No.1 as envisaged under labour laws. The aforesaid plea of contract between the managements No.1 & 2 being illegal / sham is not taken in the demand notice. The judgments referred by Learned Representative for management reported in ***AIR 1959 SC 1191*** and ***1978 LIC 1416 Calcutta (supra)*** are applicable to the facts of the present case to an extent. In the judgment reported in ***AIR 1959 SC (surpa)*** it has been in para 5 as below :-

> *"5. As we have already pointed out, Mr. Kumar has drawn our attention to the fact that several awards have made similar provisions for medical relief of the employees' families; he also emphasised the fact that whereas prior to the present award the liability of the appellant to give medical relief to its employees was in a sense unlimited it has now been limited to the extent of one month's salary of each employee. In other words, his argument was that though an additional liability to provide for medical relief to the members of the workers' families strictly so called has been imposed on the appellant, a ceiling has been placed on the said liability by directing that no employee can claim relied more than his one*

month's salary. He has also drawn our attention to the fact that the appellate tribunal has specified that the said relief would be available only to the wife, unmarried daughters and minor sons of the respondents provided they are entirely dependant on them and lived with them. These are matters which would be relevant on the merits of the award. We propose to express no opinion on this aspect of the matter. We do not also propose to express any opinion on the question as to whether a demand for medical aid for the families of the employees can be said to constitute an industrial dispute under Section 2(k) of the Industrial Dispute Act. If the respondents think that their claim for the medical relief for the members of their families is legitimate and can properly become the subject matter of an industrial dispute it is open to them to request the Government of West Bengal to refer the said question specifically or adjudication by an industrial tribunal; and if such a reference is made we have no doubt that it would be dealt with by the tribunal in the light of the contetrials which parties may raise before it. It is true that such a dispute appears to have been referred to industrial adjudication in some cases and has in fact been recognised by awards; but we are not called upon to consider that aspect of the matter in the trialnt appeal. In the result we must hold that the tribunals below exceeded their jurisdiction in entertaining a demand which was not the subject-matter of the reference. There can be no doubt that it is only the subject matter of reference with which an industrial tribunal can deal."

In the judgment reported in ***1978 LIC 1416 Calcutta (supra),*** it has been held in para 16 as below :-

"16. *The function of the National Tribunal is quasi-judicial but it is not a civil Court. It has no inherent power to decide any of the disputes raised by the parties in their pleadings. Its jurisdiction is limited and restricted only to the issues referred to by the appropriate Government by a reference."*

25. The question that whether the contractor has been interposed for supply of contract labour for the work of principal employer under a genuine contract or is a mere ruse / camouflage can be looked into under the following two circumstances (a) on issuance of prohibition notification under Section 10(1) of CLRA Act, 1970 by the appropriate Government; (b) in an industrial dispute brought by the contract labour before the Industrial Adjudicator for adjudication. In the present case, neither any notification has been issued under Section 10 of CLRA Act, 1970 by the appropriate Government nor the contract labour has raised an industrial dispute seeking declaration of his employment condition by the Industrial Adjudicator. Therefore, the question with regard to the genuineness of the contract between principal employer / management No.1 and contractor / management No.2 cannot be determined in the present case. To such circumstances, the case law referred by Learned Representative for management No.1 reported in ***AIR 2001 3527 SC*** titled as ***Steel Authority of India Limited Versus National Union Water Front Workers*** is applicable to the facts of the present case to an extent wherein in para 124(5) it is held as below :-

"(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of the contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of the having undertaken to produce any given result for the establishment or for supply of contact labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract

labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder."

26. In the present case, there is no order of termination of services of the workman. The management No.1 has taken the plea that management No.1 / GBA was having surplus manpower and in that situation the management No.1 / GBA had two options i.e. to dispense with the services of surplus permanent manpower or to adjust them in the Hand Straightening Department, which was outsourced to contract labour. Keeping in view the interest of the permanent workers, it was decided to do away with the contract labour so engaged in the Hand Straightening Department. Management No.2 / contractor was asked to withdraw his contract labour. On the other hand, management No.2 taken the plea that since the work requirement reduced with the passage of time, therefore, the management No.2 offered alternative job to the workman at another place where the work was available but the workman was adamant to work at the premises of management No.1 only and did not accept the offer of management No.1. The aforesaid plea taken by the management No.1 & 2 stands proved from cross-examination of AW1 Madhuban wherein he has admitted as correct that management No.2 has withdrawn them from management No.1 on account of termination of contract between the management No. 1 and management No.2 and their work was given to the permanent employees of the management No.1. AW1 when put to cross-examination by management No.1 stated that he was not given any offer of alternative employment by management No.2. AW1 when put to cross-examination by management No.2 stated that he had declined the offer of alternative employment given by management No.2 because he was offered less salary. From the aforesaid version of AW1 that he declined the offer of alternative employment because of less salary would support the plea of the management No.2 that management No.2 offered alternative employment to the workman. The version of AW1 that he declined the offer because of less salary is not substantiated with any proof as AW1 in his cross-examination stated that he never made any representation to management No.2 that he has been offered less salary for alternate employment. AW1 further stated that after he was refused job by the management No.1, he never approached management No.2 seeking alternative job. AW1 in his cross-examination stated that today he is not ready to work with the management No.2, if he is offered the job of Helper on current minimum wages. AW1 admitted as correct that today he is refusing to accept the job offer given by management No.2 as he is earning sufficient to maintain himself. AW1 further stated that in the present case he is seeking the relief of reinstatement from management No.1. From the aforesaid version of AW1 it is duly proved on record that the workman is not ready to accept the offer given by management No.2 / contractor for alternative employment because he is earning sufficient to maintain himself and not on the ground of less salary. Moreover, the workman is not willing to work with any other organization except management No.1 with whom the contract of management No.2 has already came to end. Consequently, there is no termination from services of the workman by its employer i.e. management No.2.

27. Accordingly, issue No.1 is decided against the workman and in favour of the managements. Issue No.2 is decided in favour of management No.1 and against the workman.

Relief :

28. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 04.08.2023

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 31st October 2023

No. 13/2/49-HII(2)-2023/16007.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **25/2022 dated 01.09.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

PARMESHWARI,H. NO.1562/2, SMALL FLATS, MALOYA, U.T. CHANDIGARH (Workman)

AND

M/S EMSON INDUSTRIES, PLOT NO.189-B, INDUSTRIAL AREA, PHASE - I, CHANDIGARH THROUGH ITS PARTNER/PROPRIETOR (Management)

AWARD

1. Parmeshwari, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 *(here-in-after in short called 'ID Act').*

2. Briefly stated the averments of claim statement are that the workman was appointed by the management as Helper on 01.02.2019. The workman remained in the un-interrupted employment up to 01.02.2020, when her services were illegally & wrongfully terminated by refusing of work. The workman was drawing ₹ 7,000/- as wages per month at the time of termination which is less than the minimum rate of wages applicable to the management. On 02.02.2020, the workman went to attend her normal duty but she was refused work by the management because the workman demanded compensation due to death of her husband, who was an employee of the management and died during and in the course of employment. Since her termination the workman has been regularly visiting the factory but the work and compensation was denied to her on one pretext or the other. The workman then left with no other alternative but to file a complaint for her reinstatement before the Labour Inspector, U.T. Chandigarh where the management offered one month wages and new appointment which the workman rightly and legally refused. The refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management has also violated Sections 25-F & 25-H of the ID Act. No charge-sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. The management has appointed fresh persons in place of workman which is violation of Section 25-H of the ID Act. Violation of the same makes the termination void. For her re-instatement workman served upon the management a demand notice dated 28.10.2021. The management neither replied the demand notice nor took the workman back on duty. The Assistant Labour Commissioner (ALC)-cum-Conciliation Officer, U.T, Chandigarh was requested for his intervention. The Assistant Labour Commissioner intervened but no settlement could be made possible during the stipulated period. The termination is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. The workman is, therefore, entitled to reinstatement. Prayer is made that the workman may be re-instated with continuity of service along with full back wages and all attendant benefits without any change in his service conditions.

3. On notice, the management contested the claim statement by filing written statement on 27.10.2022 wherein preliminary objections are raised on the ground that the present reference is not maintainable because the workman has not approached this Hon'ble Court with clean hands and concealed the material facts. The workman has no cause of action to file the present reference because the management neither terminated the services of the workman nor refused her to work in the management concern. The true facts are that husband of the workman was employed by the sister concern of the management on trial basis for 10

days. During his trial period, he died due to heart attack on account of over drinking. After the death of husband of the workman, she was employed on the post of Helper by the management on compassionate ground to help her. In the month of January 2020, the workman met with an accident somewhere outside factory of the management, therefore, she had been taking treatment from ESI hospital for the period 21.01.2020 to 29.02.2020 and again for the period 01.03.2020 to 23.03.2020. Thereafter, there was complete lock down due to COVID-19 and factory of the management remained closed, however, the management had been paying wages to its workers in compliance to the order of Labour Department, U.T. Chandigarh. The workman after availing the medical leave for the above said period and thereafter she did not turn up for duty for the reasons best known to her. The management also tried to contact the workman through her co-worker on the address as given by her at the time of joining. But she could not be contacted and the management was informed that the colony where she was living in Industrial Area, Chandigarh has been demolished and habitants of the colony have been shifted to Maloya. The management came to know address of the workman only when the management received notice from the Labour Inspector, U.T. Chandigarh. Before Labour Inspector, the management again offered her to join her duty but she did not turn up for joining her duty. After availing the medical leave the workman never contacted the management for joining her duties therefore she has voluntarily abandoned her service, therefore, she is not entitled for any relief from this Hon'ble Court and reference deserves to be declined on this ground only.

4. Further on merits, it is stated that the workman was on medical leave up to 23.03.2020 and thereafter she did not join her duties. Since, she was on the rolls, therefore, the management had been paying the wages during the lock down due to COVID-19 as per the COVID guidelines issued by the Labour Department, U.T. Chandigarh, though the workman did not rejoin his duties after availing the medical leave and in this manner workman voluntarily abandoned her services, therefore, she is not entitled for any claim before this Hon'ble Court. It is denied as wrong that the workman was being paid less than minimum wages. The management was paying wages to the workman at the rate of minimum wages as fixed by the Labour Department, U.T. Chandigarh from time to time. It is denied that husband of the workman was employee of the management. The management offered workman to rejoin her services but she never came forward to rejoin her duties. In this respect management also issued an offer to resume her duties in the demand notice as per registered letter dated 19.03.2022 on her address as given in the demand notice but she refused to receive the same for the reasons best know to him. Further similar stand is taken as taken in the preliminary objections. It is further stated that since the workman has voluntarily abandoned her services, therefore, provisions of Section 2(oo), Section 25-F and Section 25-H of the ID Act are not attracted and the workman is not entitled to any relief. Rest of the averments of claim statement are denied as wrong and prayer is made that the present reference may kindly be dismissed with the exemplary cost in the interest of justice.

5. The workman filed rejoinder wherein the contents of the written statement except admitted facts, are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of the parties, following were framed vide order dated 03.01.2023 :-

1. Whether the services of the workman were terminated illegally ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled for reinstatement with continuity of service, with full back wages and consequential benefits, as prayed for ? OPW
3. Whether the claim statement is not maintainable in the present form ? OPM
4. Relief.

7. In evidence the workman Parmeshwari examined herself as AW1. On 18.04.2023 the workman closed her evidence in affirmative. It is pertinent to mention here that in cross-examination of MW2 Charandeep Singh, the workman got proved documents i.e. ESI for the period November 2018 and December 2018 of Ganga Sagar (since deceased) husband of the workman vide Exhibit 'W1' and Exhibit 'W2' respectively.

8. On the other hand, the management examined MW1 Gurmeet Singh - Assistant, Office of Employees' State Insurance Corporation, Chandigarh, who brought the summoned record and tendered the documents Exhibit 'M1' to Exhibit 'M5'.

Exhibit 'M1' is authority letter dated Nil issued by the Branch Manager in favour of Shri Gurmeet Singh - Assistant, Office of Employees' State Insurance Corporation to depose in the present case

Exhibit 'M2' is copy of ledger of ESI ptrialning to Parmeshwari Devi, whereby she had claimed salary w.e.f. 21.01.2020 to 23.03.2020.

Exhibit 'M3' is copy of benefit payment docket dated 05.11.2020 of Employees' State Insurance Corporation in favour of Parmeshwasri Devi.

Exhibit 'M4' is copy of sanction letter dated 27.08.2020.

Exhibit 'M5' is copy of form No.10 i.e. abstention verification in respect of sickness benefit of Parmeshwari Devi.

9. Management examined MW2 Charandeep Singh S/o Jaspal Singh R/o Phase XI, Mohali, who tendered his affidavit Exhibit 'MW2/A' along with documents Exhibit 'MW2/1/' to Exhibit 'MW2/3'.

Exhibit 'MW2/1' is authority letter dated 29.05.2023 issued in favour of Shri Charandeep Singh by the management.

Exhibit 'MW2/2' is undelivered envelope containing letter sent to the workman through registered post along with postal receipt dated 17.03.2022.

Exhibit 'MW2/3' is report dated 19.03.2022 of postal department i.e. insufficient address.

10. On 21.08.2023 Learned Representative for the management closed oral evidence and on 01.09.2023 closed documentary evidence.

11. I have heard the arguments of learned representative for the parties and perused the judicial file. My issue-wise finding are as below :-

Issues No.1 & 2 :

12. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove both these issues is on the workman.

13. Under these issues the workman Parmeshwari Devi examined herself as her own witness as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which is not reproduced here for the sake of brevity.

14. On the other hand, management examined MW1 Gurmeet Singh - Assistant, Office of ESIC, Sector 29, Chandigarh who deposed that he is summoned witness and has been authorised by the Branch Manager, ESIC, Chandigarh to depose in the present case vide authority letter dated Nil Exhibit 'M1'. He has brought the summoned record. As per record, employer code No.17000395630000501 pertains to M/s Emson Industries and the claim ID No.18715763, 18721675, 19040995 stands in the name of Parmeshwari Devi W/o Late Ganga Sagar. As per ledger of ESI Parmeshwari Devi had claimed salary w.e.f. 21.01.2020 to 23.03.2020. MW1 proved the attested copy of the ledger, copy of docket dated 05.11.2020, copy of sanction letter dated 27.08.2020 and copy of attendance form No.10 is Exhibit 'M2' to Exhibit 'M5' respectively.

15. The management also examined MW2 Charandeep Singh, who *vide* his affidavit Exhibit 'MW2/A' deposed that he has been authorised by the management to appear and depose in this case on behalf of the management vide authority letter dated 29.05.2023 / Exhibit 'MW2/1'. MW2 further deposed that husband of the workman was employed by the sister concern of the management on trial basis for 10 days but during his

trial period, he died due to heart attack on account of over drinking. After the death of husband of the workman, she was employed on the post of Helper by the management on compassionate ground to help her. In the month of January 2020, the workman met with an accident somewhere outside factory of the management, therefore, she had been taking treatment from ESI hospital for the period 21.01.2020 to 29.02.2020 and again for the period 01.03.2020 to 23.03.2020 and remained on medical leave. Thereafter, there was complete lock down due to COVID-19 and factory of the management remained closed, however, the management had been paying wages to its workers in compliance to the order of Labour Department, U.T. Chandigarh. The workman after availing the medical leave for the above said period and thereafter she did not turn up for duty for the reasons best known to her. The management also tried to contact the workman through her co-worker on the address as given by her at the time of joining. But she could not be contacted and the management was informed that the colony where she was living in Industrial Area, Chandigarh has been demolished and habitants of the colony have been shifted to Maloya. The management came to know address of the workman only when the management received notice from the Labour Inspector, U.T. Chandigarh. Before Labour Inspector, the management again offered her to join her duty but she did not turn up for joining her duty. MW2 further deposed that since workman had voluntarily abandoned her service, therefore, she is not entitled to any relief. However, the management offered workman to rejoin her duties but she never came forward to rejoin her duties. In this respect respondent also issued an offer to resume her duties as per registered letter dated 19.03.2022 on her address as given in the demand notice but she refused to receive the same for the reasons best known to her. Copy of letter dated 19.03.2022 and report of Postman are Exhibit 'MW2/2' and Exhibit 'MW2/3' respectively. In this Hon'ble Court from the date of appearance of the management, it has been making offer to the workman to join her duties but she never turned up to join her duties. After availing medical leave, the workman never contacted the management for joining her duties, therefore, she has voluntarily abandoned her service and is not entitled for any relief.

16. From the oral as well as documentary evidence led by the parties, it comes out that the workman Parmeshwari is claiming that previously her husband Ganga Sagar was employed with M/s Emson Industries, who died during the course of employment. Therefore, workman Parmeshwari was appointed by M/s Emson Industries as a Helper on regular basis on compassionate grounds. On the other hand, management has taken the plea that Ganga Sagar was not an employee of M/s Emson Industries and he was an employee of its sister concern. The management did not disclose the name of its sister concern either in the written statement or during its evidence. However, from documents Exhibit 'W1' and Exhibit 'W2', it is proved that Ganga Sagar was covered under ESIC scheme and his employer code was 17000419550000606. It is also undeniable fact that workman Parmeshwari is also covered under ESI scheme. As per ledger sheet of ESIC / Exhibit 'M2' her employer's code is 17000395630000501. From documents Exhibits 'W1', Exhibit 'W2' and Exhibit 'M2' referred above it is duly proved on record that the employer of Ganga Sagar and employer of workman Parmeshwari are different. However, it is own case of the management that Ganga Sagar was employed in the sister concern of the management. In the present case, there is no dispute of the services of Ganga Sagar since deceased.

17. The workman has alleged that she joined services with the management on 01.02.2019 and remained in continuous and uninterrupted employment up to 01.02.2020 and her services were terminated on 02.02.2020 by refusing work to her. On the other hand, the management did not dispute the date of appointment of the workman. The management has pleaded that in January 2020 workman met with an accident somewhere outside the factory of the management and thus she remained on medical leave for the period w.e.f. 21.01.2020 to 29.02.2020 and 01.03.2020 to 23.03.2020. The management further pleaded that after availing the medical leave for the aforesaid period the workman did not turn up to rejoin her duty despite efforts made by the management to contact her through her co-worker on the address given by her at the time of joining her services besides the management issued registered letter dated 09.03.2022 to the workman on the address as given by her in the demand notice but she refused to receive the same. To support its plea the management has brought into evidence undelivered registered envelope issued from Emson Industries to Parmeshwari on her address of House No.1562/2, Small Flats, Maloya, Chandigarh vide Exhibit 'MW2/2' bearing postal receipt dated 17.03.2022 / Exhibit 'MW2/3'. The undelivered postal envelope bears postal endorsement dated 19.03.2022 ***'no such H.No. Found in Maloya. Incomplete address, R.T.S'.*** The workman has failed to controvert the fact that the demand notice dated 28.10.2021 issued by her to the Manager of M/s Emson Industries bears her

name and address as Parmeshwari, House No.1562/2, Small Flats, Maloya, Chandigarh, which would prove that the management had issued the registered post Exhibit 'MW2/2' to the workman on the postal address as furnished by her in the demand notice. Moreover, the workman / AW1 when put to cross-examination admitted as correct that previously she was residing in Industrial Area, Chandigarh then shifted to Maloya under Rehabilitation Scheme of Prime Minister Awas Yojana. The plea taken by the management that the workman remained in medical leave stand proved from cross-examination of workman / AW1 wherein she has admitted as correct that in January 2020 she proceeded on leave without applying leave and without getting it sanctioned and without informing the management. She returned to job after two months of her absence. Learned Representative for the management contended that the workman had worked only for 7 months with the management and did not complete the period of continuous service of 240 days as required under Section 25-B of the ID Act. On the other hand, the workman has taken the plea that she had worked for complete one year with the management. In this regard, the workman / AW1 in her cross-examination denied the suggestion as wrong that she had worked only for 7 months with the management. AW1 voluntarily stated that she had worked for complete 1 year. To my opinion, the contention of the management that the workman did not fulfill the requirement of Section 25-B of the ID Act is devoid of merits because first of all from management's own document i.e. Exhibit 'M5' it is proved that the workman was required by ESIC to submit a certificate of incapacity for the period from 01.03.2020 to 31.03.2020 in the context of verification of abstention from work and in the same process the department of ESIC vide Exhibit 'M3' made payment of ₹ 5,290/- towards sickness benefit for the claimed days from 01.03.2020 to 23.03.2020 through e-payment mode to the workman. Therefore, the period from 01.03.2020 to 23.03.2020 will be included in the service period of the workman. If for the sake of argument it is assumed that the workman was absent from duty for the period w.e.f. 21.01.2020 to 23.03.2020, in that situation also the workman has proved to be in continuous service of the management w.e.f. the date of her joining i.e. 01.02.2019 up to 19.01.2020 i.e. for 353 days. In this manner, the workman has completed continuous period of more than 240 days in 12 calendar months preceding her termination (service terminated by verbal order on 02.02.2020). Therefore, the workman falls within the purview of Section 25-B of the ID Act. Once the workman fulfils the requirement of Section 25-B of the ID Act, the services of the workman cannot be terminated except in compliance with the conditions incorporated in Section 25-F of the ID Act. In the present case, the management failed to comply with any of the conditions incorporated in Section 25-F of the ID Act. To support his arguments, Learned Representative for the workman referred cross-examination of MW1 Gurdeep Singh, wherein he stated that no charge sheet was issued and no retrenchment compensation was paid to the workman before dispensing with his / her services. To my opinion, the arguments advanced by Learned Representative for the workman carries force as it is well settled law that where pre-requisite for valid retrenchment as laid down in Section 25-F of the ID Act has not been complied with, retrenchment bringing about termination of service is ab-initio void. The relevant provisions of Section 25-F provides as under :-

> *"**25F. Conditions precedent to retrenchment of workmen.**-No workman employed in any industry who has been in continuous service for not less than one year under an employer until-*
>
> *(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
>
> *(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
>
> *(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

18. In the present case, the registered post / Exhibit 'MW2/2' calling the workman to rejoin the duty is issued by the management on 17.03.2022 i.e. after the workman raised demand notice. The demand notice is of dated 28.10.2021. The management did not produce into evidence any document or record to show any efforts made by it from 02.02.2020 up to raising of demand notice to call her back to join services with the

management. Even if, the workman did not join duty from 02.02.2020 onwards, in that situation also at the most remaining absent from duty would be considered misconduct for which the management was bound to initiate the disciplinary action against the workman. In this regard, MW2 in his cross-examination stated that no charge sheet has been issued to the workman for her absence from duty. No domestic inquiry was conducted against the workman. From the aforesaid version of MW2 it is proved that the management did not initiate any disciplinary action against the workman. It is neither pleaded nor proved by the management that it had issued any prior notice or paid notice pay in lieu of notice period or paid any retrenchment compensation to the workman, which is violation of the Section 25-F of the ID Act. MW2 in his cross-examination further stated that today he is ready to take back the workman on duty with continuity of service. He agrees that payment of back wages, if any, may be left for the decision of the court. In view of the reasons recorded above, accompanied with the admission of MW2 i.e. he is ready to take back the workman on duty with continuity of service, the verbal termination order dated 02.02.2020 is hereby set aside being illegal and the workman is held entitled to reinstatement with continuity of service and 50% back wages along with other consequential benefits.

19. Accordingly, both these issues are proved in favour of the workman and against the management.

Issues No. 3 :

20. Onus to prove this issue is on the management.

21. The management has taken the objection that the workman has not approached the Court with clean hands and concealed the material facts and therefore, the present reference is not maintainable. To my opinion, the aforesaid objection taken by the management is not sustainable and without any force because the management has failed to show as to how the workman has approached the Court with unclean hands and material facts are concealed by the workman. On being aggrieved from the act of the management, which verbally refused work to the workman, the workman was left with no other option than to raise demand notice. When the conciliation proceedings relating to the demand notice failed, the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh vide order bearing endorsement No.687 dated 24.03.2022 advised the workman to approach appropriate forum for adjudication for her dispute as provisions of Section 2-A(2) of the ID Act. Thus, the workman has a valid cause of action and locus standi. I do not find any defect so far maintainability of the present reference is concerned.

22. Accordingly, this issue is decided against the management and in favour of the workman.

Relief :

23. In the light of findings on the issues above, this industrial dispute is allowed. The workman is entitled to reinstatement with continuity of service and 50% back wages along with other consequential benefits. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the above said amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 01.09.2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 31st October 2023

No. 13/2/46-HII(2)-2023/16009.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **32/2017 dated 07.08.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

ATUL MAURYA S/O SH, TULSI RAM R/O BLOCK B-01-00664,. VILLAGE KANSAL, DISTRICT MOHALI, PUNJAB (Workman)

AND

1. SIKH EDUCATION SOCIETY THROUGH ITS SECRETARY, C/O GURU GOBIND SINGH COLLEGE FOR BOYS, SECTOR 26, U.T. CHANDIGARH
2. THE PRINCIPAL, GURU GOBIND SINGH COLLEGE FOR BOYS, SECTOR 26, U.T. CHANDIGARH. (Management)

ORDER

1. Atul Maurya, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 *(here-in-after in short called 'ID Act')* wherein on 01.04.2021, the management filed an application under Section 151 CPC for transferring / relegating the present matter to the Educational Tribunal in terms of Section 7-A of the Punjab Affiliated Colleges (Security of Services of Employees), Act 1974 *(hear-in-after in short referred as 1974 Act)* and in view of the judgment of Hon'ble Supreme Court in ***TMA Pai Foundation & Others Versus State of Karnataka & Others,*** reported in ***2002(8) SCC 481.***

2. In the application it is submitted that present dispute has raised by the workman in the present case is to be decided by the Educational Tribunal, which has the jurisdiction under Section 7-A of 1974 Act. In terms of the judgment of Hon'ble Supreme Court in ***TMA Pai Foundation & Others Versus State of Karnataka & Others*** reported in ***2002(8) SCC 481,*** Educational Tribunals were required to be constituted in each State and Union Territories for deciding disputes between employer & employees of Private Aided Colleges. In Chandigarh the said Educational Tribunal has been constituted and is presently functioning in terms of Section 7-A of 1974 Act. All disputes arising between the management and the employees including the grant of financial benefits, service benefits are to be decided by the said Educational Tribunal in the first instance. Since an alternative efficacious statutory remedy is already available to the workman, hence the present case may be dismissed. The present case is liable to be relegated on this score alone as the workman cannot directly come before this Hon'ble Court in extra-ordinary jurisdiction without availing statutory alternative remedy. In terms of the order dated 21.05.2013 passed by the Hon'ble High Court of Punjab & Haryana in CWP No.17187 of 2012, Educational Tribunal has been constituted in the Union Territory of Chandigarh, in view of the observations of the Hon'ble Supreme Court in case of ***TMA Pai Foundation (supra)*** and the same are functional and have exclusive jurisdiction to entertain all disputes between the management and the employees of privately managed aided / non-aided colleges. The jurisdiction to decide the pending lis between the parties having been conferred on the Educational Tribunal, no useful purpose will be served in keeping the present matter for adjudication before this Court and the present matter may be transferred / relegated to the Educational Tribunal, Chandigarh. This Court in number of cases has specifically transferred / dismissed or relegated the cases on similar issues by holding that in view of the establishment of Educational Tribunal, the concerned person has an efficacious alternative remedy before the Tribunal. The management has not filed such or similar application either before this Hon'ble Court or before the Hon'ble High Court of Punjab & Haryana. Prayer is made that application may be allowed.

3. On notice, workman contested the application by filing reply on 17.09.2021, wherein preliminary objections are raised on the ground that the Hon'ble High Court and the Hon'ble Supreme Court held in the judgment that School & College employees cannot approach directly to the Hon'ble High Court or Hon'ble Supreme Court before approaching the Tribunal and accordingly the workman has approached the

Industrial Tribunal-cum-Labour Court, U.T, Chandigarh against the oral termination / retrenchment of workman on 10.06.2016 without complying with Section 25-F of the ID Act, by the managing body of Guru Gobind Singh College for Boys, Sector 26, Chandigarh. The workman filed an application under Section 2-A challenging oral termination from service and is seeking reinstatement along with monetary benefits and interest. Section 25-F in the ID Act is not repealed. The workman is at liberty to approach the Labour Court. In the similar cases decided by the Hon'ble High Court, in case of ***Harchand Singh Versus Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh & Another,*** the Hon'ble High Court of Punjab & Haryana held that the Central Government employees are at liberty to approach the Central Labour Court-cum-Tribunal or The Central Administrative Tribunal (CAT). Therefore, application under Section 2-A is maintainable before this Court. The workman was employed with the managements as Mali on daily wages as per the ID Act. The management by way of application under Section 151 CPC opposed the same by assuming that management was not an 'industry' and does not fall under the category of the ID Act. The services of workman were orally terminated by the management in violation, without complying Section 25-F of the ID Act and also presume that workman was not a 'workman' as defined under the ID Act. Now it is upon the Labour Court to decide whether the management is an 'industry' within the meaning of definition of Section 2(j) of the ID Act. The management is playing delay tactics while filing transfer application, merely because other employees had got relief from the alternative remedy before the Educational Tribunal, which will not be a ground to allow the present application. The workman has approached this court, as jurisdiction also lies under the ID Act. Prayer is made that application may be dismissed with heavy cost.

4. I have heard arguments of Learned Representatives for the parties and perused the judicial file.

5. In the present matter the workman has filed a statement of claim under Section 2-A(2) of the ID Act and has challenged the verbal order of retrenchment / termination dated 10.06.2016 and is seeking reinstatement with continuity of service along with full back wages and consequential benefits. Management No.1 & 2 contested the claim statement by filing joint written reply on 09.03.2018. Workman filed replication on 09.05.2018. Issues were framed vide order dated 09.05.2018. The workman concluded evidence on 21.10.2019. At the stage of evidence of management, the present application under Section 151 CPC was filed on 01.04.2021.

6. Learned Representative for the management contented that the present matter may be transferred / relegated to the Educational Tribunal, U.T. Chandigarh by invoking Section 7-A of 1974 Act. To support his contention, Learned Representative for the management referred the judgment of Hon'ble Supreme Court in ***TMA Pai Foundation & Others Versus State of Karnataka & Others*** reported in ***2002(8) SCC 481,*** the judgment dated 28.02.2023 passed by the Hon'ble High Court of Punjab & Haryana in CWP - 26929 - 2022 titled as ***Apra Sharma Versus Managing Committee Kaintal School (Senior) & Another,*** the judgment dated 09.05.2019 passed by the Hon'ble High Court of Punjab & Haryana in ***LPA No.892 of 2019 (O&M)*** titled as ***Surinder Krishan Sharma Versus State of Punjab & Others*** and the judgment dated 13.01.2023 passed by the Hon'ble High Court of Punjab & Haryana in ***CWP No.36558 of 2019 titled as Inderjeet Singh Versus State of Punjab & Others.***

7. On the other hand, Learned Representative for the workman contented that as per the judgment of our own Hon'ble High Court in case of ***Harchand Singh Versus Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court - II, Chandigarh & Another,*** the Central Govt. Employees are at liberty to approach the Central Labour Court-cum-Tribunal or The Central Administrative Tribunal (CAT). Moreover, the similar issue has been decided recently by the Hon'ble High Court of Punjab & Haryana vide judgment dated 03.10.2018 in LPA-1554-2018 (O&M) along with connected cases bearing ***LPA-1580, 1581, 1582, 1585, 1593, 1594, 1667 & 1726-2018 (O&M)*** titled as ***Sachin Jain Vs. Vaish College of Engineering Rohtak & Anr.***

8. It is undeniable fact that in the Union Territory of Chandigarh, Educational Tribunal has been set up under Section 7-A of the 1974 Act, which is functional. As per the judgment of Hon'ble Supreme Court in ***TMA Pia Foundation (supra),*** all disputes of employees of Educational institutes except gratuity matters are to be decided by the Education Tribunal. On the basis of the findings of the aforesaid judgment, management is seeking to relegate / transfer the present matter of Industrial Dispute Reference to the Educational Tribunal. The contention of Learned Representative for the workman that as per the latest view of Hon'ble High Court of Punjab & Haryana in judgment dated 23.02.2023 in ***Sachin Jain Versus Vaish College of***

engineering, Rohtak & Another (supra), the workman is at liberty to elect the forum whether he intends to seek remedy before the Industrial Tribunal-cum-Labour Court or before the Educational Tribunal and in the present case the workman has chosen to seek remedy before the Industrial Tribunal-cum-Labour Court. The law settled in judgment dated 23.02.2023 of Hon'ble High Court of Punjab & Haryana in ***Sachin Jain Versus Vaish College of engineering, Rohtak & Another (supra)*** is well recognized by this Court but the ratio of ruling is not applicable to the facts of the present case because the judgment dated 23.02.2023 relates to the workman in whose favour finding has already been recorded by the Labour Court. The relevant portion of para 21 of the judgment dated 23.02.2023 is reproduced as below :-

> *"21. Thus, once the workman had approached the Labour Court for the same and got a findings in his favour it was not for the Learned Single Judge to derail the whole process at that point of time and relegate him to the remedy which has been provided by the stature de-hors the Civil Court."*

9. The present case is at the stage of management's evidence and is pending for adjudication. To the facts & circumstances of the present case, the judgment of Hon'ble Supreme Court in ***TMA Pia Foundation (supra)*** is applicable to an extent.

10. The ***judgment dated 09.05.2019 of Division Bench of Hon'ble High Court of Punjab & Haryana in LPA No.892/2019 (supra)*** also supports the plea of the management that the jurisdiction to try and decide the present matter lies with the Educational Tribunal, U.T. Chandigarh. The relevant para 9, 10 & 11 of the judgment is reproduced as below :-

> *"9. The expression "all cases of disputes" used in Section 7-A(12) of the Act is wide enough to encompass within its ambit any type of disputes between the employees of "unaided institutions" and their "Managing Committee" and the scope of the same cannot be held to be confined only the punishment of dismissal, removal or reduction in rank. The expression used is wide enough to confer power upon the Tribunal to hear all such disputes arising between the employees and the Managing Committee of the institution.*
>
> *10. The view being taken by us finds support from another Division Bench judgment of this Court in the case of Governing Body / Managing Committee and another v. Punjab School Education Board and others, LPA No.1172 of 2013, decided on 08.07.2013. The matter can be examined from yet another angle. If the argument advanced by learned counsel for the appellant is accepted, it would result into anomalous situation as there would be two forms for redressal of the grievances of the employees dependent upon the relief being sought by them.*
>
> *11. In view of the above facts and discussion, we find no good ground to take a view different from one taken by the learned Single Judge that the Educational Tribunal shall have the jurisdiction to entertain all the disputes between the employees and the Management of the Institution and thus we do not find any illegality in the judgment of the learned Single Judge in refusing to entertain the writ petition on the ground of existence of alternative remedy and upholding the preliminary objections of the State-respondent."*

11. In view of the reasons recorded above, the present application stands allowed. Consequently, the present industrial dispute reference is returned unanswered for want of jurisdiction with liberty to the workman to seek remedy before the Educational Tribunal, U.T. Chandigarh within three months from the date of this order. The original documents, if any submitted any of the parties, be returned to the concerned party against proper receipt and identification after placing on record attested copies thereof. Copy of this order be also sent to the Appropriate Government. The remaining judicial file be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 07.08.2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 31st October 2023

No. 13/2/45-HII(2)-2023/16011.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **31/2017 dated 07.08.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

KUNWAR SINGH S/O LATE SH. NARSINGH BAHADUR, RO HOUSE NO.1260, GROUND FLOOR, HOUSING COMPLEX, DHANAS, U,T. CHANDIGARH (Workman)

AND

1. SIKH EDUCATION SOCIETY THROUGH ITS SECRETARY, C/O GURU GOBIND SINGH COLLEGE FOR BOYS, SECTOR 26, U.T. CHANDIGARH

2. THE PRINCIPAL, GURU GOBIND SINGH COLLEGE FOR BOYS, SECTOR 26, U.T. CHANDIGARH. (Management)

ORDER

1. Kunwar Singh, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 *(here-in-after in short called 'ID Act')* wherein on 01.04.2021, the management filed an application under Section 151 CPC for transferring / relegating the present matter to the Educational Tribunal in terms of Section 7-A of the Punjab Affiliated Colleges (Security of Services of Employees), Act 1974 *(hear-in-after in short referred as 1974 Act)* and in view of the judgment of Hon'ble Supreme Court in ***TMA Pai Foundation & Others Versus State of Karnataka & Others,*** reported in ***2002(8) SCC 481.***

2. In the application it is submitted that present dispute has raised by the workman in the present case is to be decided by the Educational Tribunal, which has the jurisdiction under Section 7-A of 1974 Act. In terms of the judgment of Hon'ble Supreme Court in ***TMA Pai Foundation & Others Versus State of Karnataka & Others*** reported in ***2002(8) SCC 481,*** Educational Tribunals were required to be constituted in each State and Union Territories for deciding disputes between employer & employees of Private Aided Colleges. In Chandigarh the said Educational Tribunal has been constituted and is presently functioning in terms of Section 7-A of 1974 Act. All disputes arising between the management and the employees including the grant of financial benefits, service benefits are to be decided by the said Educational Tribunal in the first instance. Since an alternative efficacious statutory remedy is already available to the workman, hence the present case may be dismissed. The present case is liable to be relegated on this score alone as the workman cannot directly come before this Hon'ble Court in extra-ordinary jurisdiction without availing statutory alternative remedy. In terms of the order dated 21.05.2013 passed by the Hon'ble High Court of Punjab & Haryana in CWP No.17187 of 2012, Educational Tribunal has been constituted in the Union Territory of Chandigarh, in view of the observations of the Hon'ble Supreme Court in case of ***TMA Pai Foundation (supra)*** and the same are functional and have exclusive

jurisdiction to entertain all disputes between the management and the employees of privately managed aided / non-aided colleges. The jurisdiction to decide the pending lis between the parties having been conferred on the Educational Tribunal, no useful purpose will be served in keeping the present matter for adjudication before this Court and the present matter may be transferred / relegated to the Educational Tribunal, Chandigarh. This Court in number of cases has specifically transferred / dismissed or relegated the cases on similar issues by holding that in view of the establishment of Educational Tribunal, the concerned person has an efficacious alternative remedy before the Tribunal. The management has not filed such or similar application either before this Hon'ble Court or before the Hon'ble High Court of Punjab & Haryana. Prayer is made that application may be allowed.

3. On notice, workman contested the application by filing reply on 17.09.2021, wherein preliminary objections are raised on the ground that the Hon'ble High Court and the Hon'ble Supreme Court held in the judgment that School & College employees cannot approach directly to the Hon'ble High Court or Hon'ble Supreme Court before approaching the Tribunal and accordingly the workman has approached the Industrial Tribunal-cum-Labour Court, U.T, Chandigarh against the oral termination /retrenchment of workman on 10.06.2016 without complying with Section 25-F of the ID Act, by the managing body of Guru Gobind Singh College for Boys, Sector 26, Chandigarh. The workman filed an application under Section 2-A challenging oral termination from service and is seeking reinstatement along with monetary benefits and interest. Section 25-F in the ID Act is not repealed. The workman is at liberty to approach the Labour Court. In the similar cases decided by the Hon'ble High Court, in case of ***Harchand Singh Versus Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh & Another,*** the Hon'ble High Court of Punjab & Haryana held that the Central Government employees are at liberty to approach the Central Labour Court-cum-Tribunal or The Central Administrative Tribunal (CAT). Therefore, application under Section 2-A is maintainable before this Court. The workman was employed with the managements as Mali on daily wages as per the ID Act. The management by way of application under Section 151 CPC opposed the same by assuming that management was not an 'industry' and does not fall under the category of the ID Act. The services of workman were orally terminated by the management in violation, without complying Section 25-F of the ID Act and also presume that workman was not a 'workman' as defined under the ID Act. Now it is upon the Labour Court to decide whether the management is an 'industry' within the meaning of definition of Section 2(j) of the ID Act. The management is playing delay tactics while filing transfer application, merely because other employees had got relief from the alternative remedy before the Educational Tribunal, which will not be a ground to allow the present application. The workman has approached this court, as jurisdiction also lies under the ID Act. Prayer is made that application may be dismissed with heavy cost.

4. I have heard arguments of Learned Representatives for the parties and perused the judicial file.

5. In the present matter the workman has filed a statement of claim under Section 2-A(2) of the ID Act and has challenged the verbal order of retrenchment / termination dated 10.06.2016 and is seeking reinstatement with continuity of service along with full back wages and consequential benefits. Management No.1 & 2 contested the claim statement by filing joint written reply on 09.03.2018. Workman filed replication on 09.05.2018. Issues were framed vide order dated 09.05.2018. The workman concluded evidence on 21.10.2019. At the stage of evidence of management, the present application under Section 151 CPC was filed on 01.04.2021.

6. Learned Representative for the management contented that the present matter may be transferred / relegated to the Educational Tribunal, U.T. Chandigarh by invoking Section 7-A of 1974 Act. To

support his contention, Learned Representative for the management referred the judgment of Hon'ble Supreme Court in ***TMA Pai Foundation & Others Versus State of Karnataka & Others*** reported in ***2002(8) SCC 481,*** the judgment dated 28.02.2023 passed by the Hon'ble High Court of Punjab & Haryana in ***CWP - 26929 - 2022*** titled as ***Apra Sharma Versus Managing Committee Kaintal School (Senior) & Another,*** the judgment dated 09.05.2019 passed by the Hon'ble High Court of Punjab & Haryana in ***LPA No.892 of 2019 (O&M)*** titled as ***Surinder Krishan Sharma Versus State of Punjab & Others*** and the judgment dated 13.01.2023 passed by the Hon'ble High Court of Punjab & Haryana in ***CWP No.36558 of 2019*** titled as ***Inderjeet Singh Versus State of Punjab & Others.***

7. On the other hand, Learned Representative for the workman contented that as per the judgment of our own Hon'ble High Court in case of ***Harchand Singh Versus Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court - II, Chandigarh & Another,*** the Central Govt. Employees are at liberty to approach the Central Labour Court-cum-Tribunal or The Central Administrative Tribunal (CAT). Moreover, the similar issue has been decided recently by the Hon'ble High Court of Punjab & Haryana vide judgment dated 03.10.2018 in LPA-1554-2018 (O&M) along with connected cases bearing ***LPA-1580, 1581, 1582, 1585, 1593, 1594, 1667 & 1726-2018 (O&M)*** titled as ***Sachin Jain Vs. Vaish College of Engineering Rohtak & Anr.***

8. It is undeniable fact that in the Union Territory of Chandigarh, Educational Tribunal has been set up under Section 7-A of the 1974 Act, which is functional. As per the judgment of Hon'ble Supreme Court in ***TMA Pia Foundation (supra),*** all disputes of employees of Educational institutes except gratuity matters are to be decided by the Education Tribunal. On the basis of the findings of the aforesaid judgment, management is seeking to relegate / transfer the present matter of Industrial Dispute Reference to the Educational Tribunal. The contention of Learned Representative for the workman that as per the latest view of Hon'ble High Court of Punjab & Haryana in judgment dated 23.02.2023 in ***Sachin Jain Versus Vaish College of engineering, Rohtak & Another (supra),*** the workman is at liberty to elect the forum whether he intends to seek remedy before the Industrial Tribunal-cum-Labour Court or before the Educational Tribunal and in the present case the workman has chosen to seek remedy before the Industrial Tribunal-cum-Labour Court. The law settled in judgment dated 23.02.2023 of Hon'ble High Court of Punjab & Haryana in ***Sachin Jain Versus Vaish College of engineering, Rohtak & Another (supra)*** is well recognized by this Court but the ratio of ruling is not applicable to the facts of the present case because the judgment dated 23.02.2023 relates to the workman in whose favour finding has already been recorded by the Labour Court. The relevant portion of para 21 of the judgment dated 23.02.2023 is reproduced as below :-

> *"21. Thus, once the workman had approached the Labour Court for the same and got a findings in his favour it was not for the Learned Single Judge to derail the whole process at that point of time and relegate him to the remedy which has been provided by the stature de-hors the Civil Court."*

9. The present case is at the stage of management's evidence and is pending for adjudication. To the facts & circumstances of the present case, the judgment of Hon'ble Supreme Court in ***TMA Pia Foundation (supra)*** is applicable to an extent.

10. The ***judgment dated 09.05.2019 of Division Bench of Hon'ble High Court of Punjab & Haryana in LPA No.892/2019 (supra)*** also supports the plea of the management that the jurisdiction to try

and decide the present matter lies with the Educational Tribunal, U.T. Chandigarh. The relevant para 9, 10 & 11 of the judgment is reproduced as below :-

"9. The expression "all cases of disputes" used in Section 7-A(12) of the Act is wide enough to encompass within its ambit any type of disputes between the employees of "unaided institutions" and their "Managing Committee" and the scope of the same cannot be held to be confined only the punishment of dismissal, removal or reduction in rank. The expression used is wide enough to confer power upon the Tribunal to hear all such disputes arising between the employees and the Managing Committee of the institution.

10. The view being taken by us finds support from another Division Bench judgment of this Court in the case of Governing Body / Managing Committee and another v. Punjab School Education Board and others, LPA No.1172 of 2013, decided on 08.07.2013. The matter can be examined from yet another angle. If the argument advanced by learned counsel for the appellant is accepted, it would result into anomalous situation as there would be two forms for redressal of the grievances of the employees dependent upon the relief being sought by them.

11. In view of the above facts and discussion, we find no good ground to take a view different from one taken by the learned Single Judge that the Educational Tribunal shall have the jurisdiction to entertain all the disputes between the employees and the Management of the Institution and thus we do not find any illegality in the judgment of the learned Single Judge in refusing to entertain the writ petition on the ground of existence of alternative remedy and upholding the preliminary objections of the State-respondent."

11. In view of the reasons recorded above, the present application stands allowed. Consequently, the present industrial dispute reference is returned unanswered for want of jurisdiction with liberty to the workman to seek remedy before the Educational Tribunal, U.T. Chandigarh within three months from the date of this order. The original documents, if any submitted any of the parties, be returned to the concerned party against proper receipt and identification after placing on record attested copies thereof. Copy of this order be also sent to the Appropriate Government. The remaining judicial file be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 07.08.2023.

Secretary Labour,
Chandigarh Administration.

CHANDIGARH ADMINISTRATION
OFFICE OF THE COMMISSIONER OF FOOD SAFETY

Order

The 25th October, 2023

No. DO-2023/3988.—WHEREAS, Regulation 2.3.4 of the Food Safety & Standards Prohibition and Restriction on Sales) Regulations, 2011 made by the Food Safety & Standards Authority of lndia in exercise of the powers conferred by Section 92 of the Food Safety and Standards Act, 2006 (Central Act 34 of 2006) read with section 26 thereof, prohibits articles of food in which tobacco and nicotine are used as ingredients, as they are injurious to health.

AND WHEREAS, Gutkha and Panmasala are the articles of food in which tobacco and nicotine are widely used as ingredients now-a-days.

AND WHEREAS, it is expedient to prohibit Gutkha and pan masala in the Union Territory of Chandigarh being food products in which tobacco and nicotine are widely used as ingredients.

AND WHEREAS, the Commissioner of Food Safety, Chandigarh Administration, is empowered under Section 30 of the Food Safety & Standards Act, 2006 to prohibit in the interest of public health, the manufacture, storage, distribution or sale of any article of food in the whole of the Union Territory of Chandigarh for a period not exceeding one year.

NOW, THEREFORE, the undersigned in exercise of the powers conferred under Section 30 of the Food Safety & Standards Act, 2006, hereby, prohibit in the interest of public health, the manufacture, storage, sale or distribution of Gutkha and Panmasala containing tobacco or nicotine as ingredients by whatsoever name it is available in the market, in the whole of Union Territory of Chandigarh for one year from the date of issue of this Order.

AJAY CHAGTI, IAS,
Commissioner of Food Safety,
Chandigarh Administration,
Chandigarh.

Chandigarh :
The 19th October, 2023.

CHANGE OF NAME

I, Shalini, D/o Romesh Sapaiya, W/o Aman Kuldip Kumar Bhasin, # 1654, Sector 49-B, Chandigarh, have changed my name to Shalini Sapaiya.

[1524-1]

I, Navita Gupta Jain *Alias* Navita Jain *Alias* Navita Bhupinder Gupta, W/o Varun Jain, R/o H. No. 3055, First Floor, Sector 20-D, Chandigarh, has changed my name from Navita Gupta Jain *Alias* Navita Jain *Alias* Navita Bhupinder Gupta to Navita Gupta for all future purposes.

[1525-1]

I, Parminder Paul Singh Bhatia, S/o Jiwan Singh, # 94,, Sector 27-A, Chandigarh, have changed my name to Parminder Pal Singh.

[1526-1]

I, Govinderjit Kaur Rekhi, W/o Gursharan Singh Rekhi, R/o House No. 352, Sector 44-A, Chandigarh-16047, have changed my name to Govinder Kaur Rekhi.

[1527-1]

I, Joginder Kumar Sharma, S/o Madan Mohan Sharma, R/o # 69, Khuda Alisher, Chndigarh, have changed my name to Raj Kumar Sharma.

[1528-1]

I, Aman Bhasin, S/o Kuldip Kumar Bhasin, R/o H. No. 1654, Pushpac Complex, Sector 49-B, Chandigarh, have changed my name to Aman Kuldip Kumar Bhasin.

[1529-1]

I, Shiv Nath, S/o Chhote Lal, House No. 320-A, Small Flats Dhanas, Chandigarh, have changed my name from Shiv Nath to Sushil.

[1530-1]

I, Amit Gupta, S/o Rakesh Gupta, H. No. 202, Sector 40-A, Chandigarh, have changed my minor daughter's name Chaitanya Gupta to Chanvi Gupta.

[1531-1]

I, Santosh Istwal, S/o O.P. Sharma, # 818, Sector 47-A, Chandigarh, have changed my minor daughter name from Shivangi Sharma to Shivangi Istwal.

[1532-1]

I, Santosh Istwal, S/o O.P. Sharma, # 818, Sector 47-A, Chandigarh, have changed my minor son name from Akshit Kumar Sharma to Akshit Kumar Istwal.

[1533-1]

I, Santosh Kumar Sharma, S/o O.P. Sharma, # 818, Sector 47-A, Chandigarh, have changed my name to Santosh Istwal.

[1534-1]

I, Archana Sharma, W/o Santosh Istwal, # 818, Sector 47-A, Chandigarh, have changed my name to Archana Istwal.

[1535-1]

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